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5 || Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

8 KAMALA BADE MESIK,) CASE NO. CV 07-0019
9 vs. Plaintiff,)
10 DKK INC. and KIM HONG KYUN,) DECLARATION OF COUNSEL
11 Defendants.)
12) Date: Thursday, January 3, 2008
13) Time: 9:30 a.m.
14) Judge: Hon. Alex R. Munson

14 || I, Mark B. Hanson, do hereby declare as follows:

15 1. I am competent to testify, and if called to testify, I would do so in accord herewith.

16 2. I am the attorney for DKK, Inc. and Kim Hong Kyun with regard to this particular

17 matter.

18 3. On July 27, 2007, on behalf of DKK, Inc. and Kim Hong Kyun, I contacted Danilo

19 Aguilar, the attorney for the plaintiff in this matter, to discuss with Mr. Aguilar the case,

20 generally. In that discussion, I first raised the issue that neither DKK, Inc. nor Kim Hong

21 Kyun had been served with a summons and a copy of the Complaint as required by the Federal

22 Rules of Civil Procedure.

23 4. Mr. Aguilar admitted that the service on Kim Hong Kyun was no good, but he stated
24 that whomever was served with the summons for DKK, Inc. "said that he was a supervisor."

25 5. I was my information at that time that DKK, Inc. and Kim Hong Kyun received
26 notice of the pendency of the case through a poker attendant named Adonis Munoz who was
27 (and still is) a poker room attendant for a company named MKK, Inc.
28

1 6. Before my first conversation with Mr. Aguilar, I had also obtained and reviewed Mr.
2 Aguilar's July 18, 2007 Declaration of Counsel in Support of Request for Entry of Default and
3 the Clerk of Court's July 24, 2007 Entry of Default as to All Defendants.

4 7. In that August 27, 2007 discussion with Mr. Aguilar, we agreed that Mr. Aguilar
5 would meet with his client, develop a settlement demand, and write me a settlement demand
6 letter that I could present to my clients. It was my understanding from the conversation that
7 Mr. Aguilar was going to do this as soon as practicable. It was also my understanding from the
8 conversation that Mr. Aguilar was not going to move for a default judgment notwithstanding
9 that he had obtained an entry of default "as to all defendants" and that the issue of the entry
10 of default would be dealt with at a later date.
11

12 8. Subsequent to my conversation with Mr. Aguilar, I obtained from the Court's files
13 a return of service of a summons for DKK, Inc. purportedly served on May 25, 2007 by a
14 process server named Javier M. Atalig Jr. *See* Summons attached hereto as Exhibit "A."

15 9. I also obtained from the Court's files a return of service of a summons for Kim Hong
16 Kyun purportedly served on May 30, 2007 also by Javier M. Atalig Jr. *See* Summons attached
17 hereto as Exhibit "B."

18 10. Both summons confirmed DKK, Inc.'s and Kim Hong Kyun's position that they
19 were not properly served, *i.e.*, that DKK, Inc. was purportedly served through an individual
20 named Jin Guang Ri and that Kim Hong Kyun was purportedly served through an individual
21 named Adonis Munez.

22 11. Having not heard from Mr. Aguilar, I sent him a follow up e-mail on August 3,
23 2007 and another follow up e-mail again on August 9, 2007.

24 12. In response to my e-mails, on August 9, 2007 Mr. Aguilar stated that he had not
25 had an opportunity to meet with the plaintiff to discuss a proposal, but that he hoped to send
26 me something by the following week.
27

28 13. Thereafter, on several occasions when I would see Mr. Aguilar at the

1 Commonwealth courts, I would ask him about the status of the forthcoming demand letter
2 from the plaintiff. Each time, Mr. Aguilar assured me that it was still forthcoming.

3 14. On September 9, 2007, I called Mr. Aguilar to follow up on the status of the
4 matter.

5 15. On October 23, 2007, I again called Mr. Aguilar to follow up on the status of the
6 matter.

7 16. Finally, on November 5, 2007, Mr. Aguilar sent me a letter with a demand therein,
8 *inter alia*, to settle this matter for a sum certain.

9 17. After reviewing plaintiff's demand extensively with my clients, on November 14,
10 2007, on behalf of DKK, Inc. and Kim Hong Kyun, I sent a letter in response to plaintiff's
11 November 5, 2007 demand letter. Therein, the demand was rejected and a counter-offer was
12 made. I indicated in the letter that if the counter-offer was unacceptable, plaintiff should seek
13 to vacate the entry of default she obtained and re-serve both defendants, setting forth in the
14 counter-offer letter the facts of the defective service as I then understood them.

16 18. In the November 14, 2007 letter, I set a deadline of Friday, November 30, 2007 for
17 plaintiff's acceptance or rejection of the counter-offer and, if rejected, for the reversal of the
18 entry of default and the re-service of the defendants. I made it clear in the letter that if neither
19 action occurred on or before November 30, 2007, defendants would bring all appropriate
20 motions, including a motion for costs and attorney's fees for having to so move.

21 19. Even after my receipt of plaintiff's November 5, 2007 demand letter, I did not have
22 cause to suspect that plaintiff would proceed with a motion for a default judgment. Because
23 of the defective service, defendants were not yet part of the matter, and no motion was
24 necessary given that the parties were working towards a non-litigious resolution of the matter.

25 20. To keep myself informed, I regularly check the court's on-line calendar which
26 appeared to be down for a number of days in mid-November 2007, or at least I was unable to
27 access the site during that period. However, on November 21, 2007, the system was up and
28

1 running and reflected that a hearing was held on the morning of November 19, 2007 on
2 plaintiff's motion for a default judgment.

3 21. That is the first I had heard of any default proceedings since the entry of default
4 obtained by plaintiff on July 24, 2007.

5 22. I immediately downloaded from PACER all of the relevant documents and
6 reviewed what had transpired beginning November 14, 2007, the same day I sent the counter-
7 offer letter on behalf of DKK, Inc. and Kim Hong Kyun.

8 23. It was only then that I became aware of what had actually transpired and that Mr.
9 Aguilar was representing to the Court that he had not heard from the defendants in months.
10

11 24. It was also at that time that I realized that a motion would be necessary prior to
12 the November 30, 2007 deadline DKK, Inc. and Kim Hong Kyun had set in the counter-offer
13 to plaintiff's November 5, 2007 demand letter.

14 25. I was not informed and, accordingly, not present at the November 19, 2007 hearing
15 on plaintiff's motion for a default judgment, so my knowledge of what transpired orally therein
16 is limited to the court's minute order and subsequent written order thereafter. However, my
17 review of the records available from PACER indicates that neither plaintiff nor her counsel
18 have yet informed the Court of the issues defendants have raised with regard to defective
19 service of the summons on DKK, Inc. and Kim Hong Kyun.

20 I swear under the penalty of perjury that the forgoing is true and correct and that this
21 Declaration was executed this 27th day of November, 2007 in Saipan, Commonwealth of the
22 Northern Mariana Islands.

23

24

/s/ Mark B. Hanson

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MARK B. HANSON

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Attorney for *Defendants*

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